IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 241 of 2000
Judgment reserved on: 11.12.2007.
Date of Decision: 14-12-2007.

Raj Kumar and another ……..Appellants.

Versus

State of H. P. ……..Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? . No.

For the appellant : Mr. K. C. Rana, Senior Advocate, with Mr Rajesh Mandhotra, Advocate.

For the respondent : Mr. V. K. Verma, Additional Advocate General.

Surinder Singh, J.

In this appeal, Raj Kumar appellant has assailed his conviction and sentence passed under Section 323 of the Indian Penal Code to under-go rigorous imprisonment for a period of six months and to pay a fine of Rs. 1000/- and Anil Kumar has challenged his conviction and sentence under Section 324, I.P.C. to undergo imprisonment for a period of two years and to pay a fine of Rs. 2000/- passed by the trial court.

Precisely, the case of the prosecution has been that there was a marriage function in the house of one Kali Dass in village *Rohn* on 17-2-1996. At About 9.00 P.M, Santokh Singh and Subhash Chand, who were also present in the marriage, were sitting in the room of house of Kali Dass. Suddenly they heard a noise of quarrel coming from the court yard of that house. Thus, both of them came out and saw Mehar Chand and Parshinda Ram were being beaten up by the appellants. Santokh Singh tried to intervene but Raj Kumar gave a danda blow on his head and Anil

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[1] Whether reporters of the Local papers are allowed to see the judgment? Yes.

Kumar had stabbed him causing five injuries. Santokh Singh injured was taken to Sub Divisional Hospital Palampur. Dr. Dinesh Sood (PW2) examined him and found the following injuries on his person:

(i) There was a cut lacerated wound on scalp about 1.8 c.m in length, with a irregular margins on saggital suture area in the central post of the scalp. It was skin deep.

(ii) There were four multiple stab wounds in front of chest and upper abdomen as indicated in the picture as under:

a) There was stab wound 1.2 cm in length approximately with separation of margin of 2 mm in the centre.

b) Another wound of similar size.

c) Third wound was of the similar size.

d) Fourth wound was smaller in size.

Injuries (a) to (d) and their position in the body were separately shown in the diagram of the Medico Legal Certificate (Exhibit PW2/B). All the injuries were simple in nature having been caused within two to six hours. Injury No.1 was opined to have been caused with a blunt and the remaining with sharp edged weapon. According to the Doctor, injury No.1 could be caused by a *Danda* Exhibit P6 and the other injuries were possible by the knife Exhibit P5. Doctor informed the Police.

Santokh Singh was found fit to make the statement. Sub Inspector Gurdass Ram (PW16) Investigating Officer of Police Station, Palampur visited the Hospital and on giving fitness certificate (Exhibit PW2/C) by the Doctor recorded the statement (Exhibit PW1/A) of Santokh Singh, on the basis of which FIR Exhibit PW14/B was registered under Sections 307, 323 read with Section 34 of the Indian Penal Code. The

Police prepared the site plan Exhibit PW15/A, took into possession Medico Legal Certificate of the injured Santokh Singh. Appellants were also arrested on the same day and were got medically examined.

Dr. Uttra Kashyap (PW3) examined Raj Kumar, appellant No.1, on 18.2.1996 and found the following simple injuries caused with blunt weapon on his person:

i) Irregular lacerated wound eight in number semi circular in shape and the size was 5 to 7 mm covered with clotted and dry blood. Surface was pale and pink.

ii) Palm was swollen and movements of fingure was painful.

Subhash Chand (PW4) was also examined by the said Doctor. He was having only one simple injury on his person in the form of linear abrasion right parietal region of scalp just adjacent to mid-line having size of 1.5 cm. Surface was pale pink. The injury was simple in nature having been caused within 48 hours of the examination. His M.L.C. is Exhibit PW3/A. In the opinion of the Doctor, the injury found on the person of Raj Kumar (appellant) and Subhash Chand (PW) were possible in scuffle.

The Police had taken into possession the blood stained sweater, shirt, pent of Santokh Singh vide memo Exhibit PW1/B, Danda Exhibit P1 was taken into possession from appellant Raj Kumar vide memo Exhibit PW4/B. His blood stained wearing apparel were taken into possession vide memo Exhibit PW5/A. Pursuant to the disclosure statement Exhibit PW6/A of Anil Kumar, Police recovered knife Exhibit P5 vide memo Exhibit PW8/B. Sketch thereof was taken on Exhibit PW8/A. After recording the statements of the witnesses and on receipt of the report of the Chemical Examiner Exhibit PX, the challan under the aforesaid Sections was presented in the Court for trial.

Finding a *pram facie* case under Section 307 read with Section 34, I.P.C., the appellants were charge-sheeted. They pleaded not guilty and claimed trial.

To prove their case, the prosecution examined its witnesses and the appellants were also examined under Section 313 of the Code of Criminal Procedure. Their case was of denial simplicitor.

Appellants were called upon to enter their defense but no evidence in defense was led.

After hearing the learned counsel for the parties and upon going through the evidence on record, the learned trial Court did not find it a case worth conviction under Section 307 of the Indian Penal Code. Accordingly they were acquitted for the offence charged. However, each of the appellants were convicted and sentenced for the offences as stated above.

The conviction and sentence have been made challenged in the instant appeal, precisely, on the ground that the learned trial Court did not appreciate the evidence on record in its right perspective.

I have heard Shri K.C. Rana, Senior Advocate duly assisted by Shri Rajesh Mandhotra for the appellants and have carefully gone through the evidence on record.

As already stated above, complainant Santokh Singh had sustained the Danda and knife blows. In the same incident, Subhash Chand, who was accompanying Santokh Singh, had also sustained the simple injuries. While corroborating the case of the prosecution, Santokh Singh categorically stated that he along with Subhash Chand had visited Kali Dass to attend the marriage function. Both were sitting in the house of Kali Dass. They heard the noise of quarrel from the site of the court yard of the house. Both of them came out and noticed that Mehar Chand and Parshinda Ram were being given beatings by the appellants. Another

Santokh Singh son of Kirpa Ram, Omi and Parkash were also present there. He tried to intervene. Appellant Raj Kumar inflicted danda blow on his head whereas accused Anil Kumar inflicted five injuries with knife on his chest and stomach. The blood started oozing out from the wounds. Thereafter they ran away. During the trial, he identified clothes, Danda Exhibit P1 and knife Exhibit P5.

In Exhibit PW1/A, the statement of Santokh Singh, the names of those persons with whom the appellants were quarreling were not mentioned which, in my opinion, is not fatal. Both the above witnesses, i.e, PW1 and PW4, have categorically given the count of the injuries inflicted by the appellants. The injured knew Anil Kumar from his childhood. Further, according to him, Kali Dass and Barfi Ram (PW7) came after he sustained injuries from the appellants on hearing his noise.

Burfi Ram (PW7) has lent strength to their version that he along with Partap Singh had rushed to the spot, on reaching there, he noticed the bleeding injuries on the head and chest of Santokh Singh. At that time, he was lying on the bed in the house of Kali Dass. On inquiry, Santokh Singh (PW1) had disclosed that Raj Kumar had inflicted injuries on his head with Danda and Anil Kumar gave knife blows on his chest causing the injuries. Dr. Dinesh Sood (PW2) has given the details of the injuries sustained by Santokh Singh, as discussed above, which have not been assailed in his cross-examination by the appellants. The injuries found on the person of the appellants by Dr. Uttra Kashyap (PW3) were also not assailed which further corroborates that the appellants had assaulted the complainant in the manner deposed by him.

Thus, on the reappraisal of the evidence, aforesaid, in my considered opinion, the conviction for the above offences recorded by the trial court are based on evidence on record.

The evidence against them with respect to the aforesaid offences is worth inspiring confidence which can be acted upon and the conviction passed by the trial Court is sustainable.

Shri K.C. Rana, ld. counsel argued to take a lenient view keeping in view the young age of the appellants. I have considered this aspect of the matter on sentencing. Appellants were in early twenties at the time of the alleged incident. Now they have settled in life and there is no criminal history to their dis-credit. The report of the Probation Officer was also called for. Nothing adverse was noticed. Therefore, I feel that release of the appellants on probation may transmute on their look and mind, thus instead of awarding the substantive sentence as passed by the learned trial Court, it shall be expedient and in the interest of justice to release them on probation, while maintaining the fine.

Therefore, instead of substantive sentence, it is ordered that Raj Kumar is released by giving him the benefit of Section 3 of the Probation of Offenders Act and he is accordingly admonished but the fine imposed upon him shall be paid by him if not already paid on or before 31-1-2008 along with a compensation of Rs. 2000/- whereas, Anil Kumar who has been convicted under Section 324 of the Indian Penal Code, while maintaining his fine, he is given the benefit of Section 4 of the Probation of Offenders Act with a direction to execute the bond to keep peace for a period of one year before the trial Court in terms of Section 4 of the aforesaid Act, in addition of payment of fine as imposed by the trial Court, if not already paid, shall be deposited on or before the date aforesaid in the trial court along with an amount of Rs. 5000/- as compensation. The amount shall be deposited by the appellants in the trial Court failing which it shall be recovered as arrears of land revenue under Section 421 of the Code of Criminal Procedure. The amount of compensation amounting to

Rs. 7000/- (Rs. 2000 + Rs. 5000) shall be paid to the complainant. The matter is accordingly disposed of. Send down the records.

(Surinder Singh)
Judge.

December 14 , 2007.
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